



Billing Code: 8025-01

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 124, 125, 126, and 127

RIN: 3245-AG34

Women-Owned Small Business Federal Contract Program

AGENCY: U.S. Small Business Administration

ACTION: Interim final rule; request for comments.

SUMMARY: The U.S. Small Business Administration (SBA) is amending its regulations to make them consistent with the inflationary adjustments that are already codified in the Federal Acquisition Regulation (FAR) as they relate to the Women-Owned Small Business (WOSB) Program and the Simplified Acquisition Threshold. In addition, the SBA is amending its regulations pertaining to the WOSB Program protest procedures so that they are consistent with the protest procedures for SBA's other government contracting programs.

DATES: Effective Date: This rule is effective on [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

Comment Date: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 3245-AG06 by any of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov> and follow the instructions for submitting comments.

- Mail, for paper, disk, or CD-ROM submissions: Dean Koppel, Assistant Director for Policy and Research, 409 Third Street, SW., Washington, DC 20416.
- Hand Delivery/Courier: Dean Koppel, Assistant Director for Policy and Research, 409 Third Street, SW., Washington, DC 20416.

SBA will post all comments on <http://www.Regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.Regulations.gov>, please submit the information to Dean Koppel and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make a final determination of whether the information will be published or not.

FOR FURTHER INFORMATION CONTACT: Dean Koppel, Assistant Director for Policy, and Research, at (202) 205-7322 or by e-mail at dean.koppel@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 811 of the Small Business Reauthorization Act of 2000, Pub. L. 106–554, added section 8(m) to the Small Business Act, 15 U.S.C. 637(m), authorizing Federal contracting officers to restrict competition to eligible Women-Owned Small Businesses (WOSBs) or Economically Disadvantaged Women-Owned Small Business (EDWOSBs) for Federal contracts in certain industries. Section 8(m) of the Small Business Act (Act) sets forth certain criteria for the WOSB Program. Specifically, the Act provides the following requirements in order for a contracting officer to restrict competition for EDWOSBs or WOSBS under this program:

- An eligible concern must be not less than 51 percent owned by one or more women who are “economically disadvantaged” (i.e. an EDWOSB). However, SBA may waive this requirement of economic disadvantage for procurements in industries in which WOSBs are “substantially underrepresented.”
- A WOSB is a small business concern owned and controlled by women, as defined in section 3(n) of the Act. Section 3(n) of the Act defines a women owned business as one that is at least 51 percent owned by one or more women and the management and daily business operations of the concern is controlled by one or more women. 15 U.S.C. 632(n).
- The contracting officer must have a reasonable expectation that, in industries in which WOSBs are underrepresented, two or more EDWOSBs will submit offers for the contract or, in industries where WOSBs are substantially under represented, two or more WOSBs will submit offers for the contract.
- The anticipated award price of the contract must not exceed \$5 million in the case of manufacturing contracts and \$3 million in the case of all other contracts.
- In the estimation of the contracting officer, the contract can be awarded at a fair and reasonable price.
- Each competing concern must be duly certified by a national certifying entity approved by SBA, as an EDWOSB or WOSB, or must self-certify to the contracting officer and provide adequate documentation that it is an

EDWOSB or WOSB. The statute imposes penalties for a concern's misrepresentation of its status.

- The contract must be for the procurement of goods or services with respect to an industry identified by SBA pursuant to a statutorily mandated study as one in which EDWOSBs are underrepresented or substantially underrepresented or WOSBs are substantially underrepresented with respect to Federal procurement.

Thus, the Small Business Act sets forth statutory thresholds of \$5 million and \$3 million for contracts awarded under this program. 15 U.S.C. § 637(m)(2)(D). These thresholds have been in statute since 2000.

Recently, the SBA implemented the WOSB program by publishing a final rule in the Federal Register on October 7, 2010, (75 FR 62258). That final rule sets forth the procedures for the WOSB Program and included the above-referenced statutory thresholds of \$5 million and \$3 million.

Subsequent to SBA's publication of the final rule in the Federal Register, the Federal Acquisition Regulatory (FAR) Council published an interim final rule in the Federal Register on April 1, 2011 (76 FR 18304) that incorporated provisions of the WOSB Program into the FAR. The FAR Council is authorized by 41 U.S.C § 431a to review all statutes with dollar based acquisition-related thresholds and adjust for inflation where appropriate. Accordingly, in this interim final rule, the FAR Council adjusted the statutory thresholds of \$5 million and \$3 million for contracts awarded under the WOSB Program. The FAR Council amended the thresholds so that the anticipated award price of the contract awarded under the WOSB Program must not exceed \$6.5 million in the

case of manufacturing contracts and \$4 million in the case of all other contracts. Consequently, SBA is amending these thresholds in its regulations, as well.

In addition, the WOSB Program final rule addresses application of the program for certain dollar value acquisitions. Specifically, in several sections of its regulations, SBA addresses contracting among the various SBA small business programs for acquisitions valued above and below the Simplified Acquisition Threshold. The FAR Council published a rule in the Federal Register on August 30, 2010, effective October 1, 2010, at 75 FR 53129, that has adjusted the Simplified Acquisition Threshold for inflation. The WOSB rule is not consistent with these changes. For example, the WOSB rule states that the Simplified Acquisition Threshold is \$100,000, but the FAR has adjusted that threshold to \$150,000. Consequently, SBA is amending these thresholds in its regulations, as well.

SBA is also amending its protest procedures for the WOSB Program. The SBA published a final rule in the Federal Register on February 2, 2011, at 76 FR 5680, amending its protest and appeal procedures for all of its government contracting programs (HUBZone, Service-Disabled Veteran-Owned (SDVO), and size programs). That final rule varies slightly from the protest procedures set forth in the WOSB Program final rule. Therefore, the SBA intends to amend the regulations so that all of its procurement program protest procedures are consistent.

Further, SBA has noticed one error in the regulations that it would like to correct. Each of these amendments is discussed below.

II. Section-By-Section Analysis

SBA is amending §§ 124.503(j), 125.2(f), 125.19(b), 126.607(b), 127.503(d), by

deleting the prior Simplified Acquisition Thresholds and Micro-purchase Thresholds referenced and replacing those threshold values in all cases with the phrase “Simplified Acquisition Threshold” or “Micro-purchase Threshold.” Because these thresholds are subject to change for inflation and are commonly known in the procurement community, the SBA believes it would be best to simply refer to the terms.

The SBA is also clarifying §127.301(a)(2), which addresses when a contracting officer may accept a business concern’s self-certification in the Online Representations and Certifications Application (ORCA). The regulation explains that a contracting officer may accept a concern’s self certification in ORCA if the apparent successful offeror WOSB or EDWOSB has provided the required documents. The SBA is amending the regulation to clarify that the contracting officer can accept the self-certification if, in addition to providing the required documents, there has been no protest or other credible information that calls into question the concern’s eligibility as an EDWOSB or WOSB. The SBA has received some inquiries about this issue and believes it would be best to clarify it in the regulations. If there is a protest or information that calls into question an apparent awardee’s eligibility, the contracting officer should not be making an award to that business concern until its status has been verified.

SBA is also amending § 127.503(a)(2) and § 127.503(b)(2) to revise the acquisition-related dollar thresholds the Federal agencies use for determining when the procuring activities can set aside a requirement for WOSBs or EDWOSBs. As discussed above, the FAR Council has adjusted these thresholds for inflation. The regulation now explains that the anticipated award price of the contract must not exceed \$6.5 million in the case of manufacturing contracts and \$4 million in the case of all other contracts for a

WOSB or EDWOSB set aside. With this amendment, the FAR and SBA's regulations will be consistent.

SBA is also amending § 127.503 by adding a new paragraph (f) to inform the users about the FAR Council's authority to make inflationary adjustments for the WOSB Program's competitive thresholds. This information is set forth in SBA's regulations for its other contracting programs (see e.g. 13 CFR § 126.601(a)), and SBA believes it should be in the WOSB Program rule, as well.

The SBA is also amending § 127.604, which addresses WOSB and EDWOSB protest procedures. According to the current WOSB rule, a contracting officer may award a contract after receipt of a protest if he/she determines in writing that an award must be made to prevent significant harm to the public interest. However, the final protest rule SBA issued with respect to the other government contracting programs permits a contracting officer to proceed with an award after receipt of a protest if necessary to protect the public interest. The SBA has changed the WOSB Program rule to state the same for consistency.

The SBA has also amended § 127.604(a) to clarify that even if a contracting officer determines that award must be made to protect the public interest, then notwithstanding such a determination, the provisions of paragraph (f) of that section apply to the procurement in question. Paragraph (f) addresses the effect of a WOSB or EDWOSB status determination. Again, this clarification is to ensure that the WOSB protest regulations are consistent with SBA's final protest rule issued with respect to the other government contracting programs.

In addition, the SBA is deleting the second and third sentences of current § 127.604(d), which requires the contracting officer to contact SBA if SBA has not yet issued a status determination by the 15 day deadline. The SBA's final rule on protests for its other government contracting programs did not have such a requirement, but rather explained that if SBA does not issue its determination within the 15 day period, the contracting officer may award the contract if he or she determines in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government. However, notwithstanding such a determination, the contracting officer must follow the procedures outlined regarding the effect of SBA's status determination. The SBA has amended the WOSB program protest procedures to be consistent with SBA's protest procedures for its other contracting programs.

The SBA has also amended §127.604(f)(2)(i) to explain that if a contracting officer receives an SBA determination that the apparent successful WOSB or EDWOSB is not eligible after contract award, and no Office of Hearings and Appeals appeal has been filed, the contracting officer shall terminate the award. Again, this is consistent with SBA's protest procedures for its other contracting programs.

Finally, the SBA is correcting an error in the third sentence of §127.604(c)(1), which addresses how SBA processes a WOSB or EDWOSB status protest. Specifically, SBA is replacing the requirement that the EDWOSB submit "the two most recent personal income tax returns" with "the three most recent personal income tax returns". In § 127.402, the SBA discusses the documents to be collected for eligibility examinations and states that the agency requires the three most recent personal income tax returns.

SBA intended to collect the three most recent personal income tax returns with respect to protests, as well, and so the two regulation sections need to be consistent.

III. Justification for Publication as an Interim Final Rule

In general, SBA publishes a rule for public comment before issuing a final rule in accordance with the Administrative Procedures Act (APA) and SBA regulations. 5 U.S.C. 553 and 13 CFR 101.108. The APA provides an exception to this standard rulemaking process where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting public comment.

In the present case, the SBA notes that Public Law 108-375, 41 U.S.C. 431a requires the FAR Council to take responsibility for adjusting each acquisition-related dollar threshold provided by law and publish a notice of the adjusted dollar thresholds in the Federal Register. These actions have been completed and a final rule with an immediate effective date was published in the Federal Register on April 1, 2011, 76 FR 18304, which affects the WOSB Program. Another such action was taken and a final rule with an immediate effective date was published in the Federal Register on August 30, 2010 at 75 FR 53129, which affects the Simplified Acquisition Threshold. The WOSB Program final rule contained acquisition-related dollar thresholds subject to inflationary adjustments that are currently codified in the FAR. This interim final rule is amending SBA's regulations to acknowledge and implement the adjustments that are codified the FAR. The SBA is not establishing new or differing acquisition-related dollar thresholds

with this interim final rule. Rather, SBA is merely amending its regulations to conform to the FAR and advise the users of SBA's regulations of the inflationary adjustments to SBA's small business programs every five years. Immediate implementation of the interim final rule is needed to ensure a consistency between the SBA's regulations and the FAR for the acquisition-related dollar thresholds governing small business contracting opportunities. Consequently, SBA believes it is unnecessary to publish this rule as a proposed rule because it is beneficial to the public and acquisition communities that the regulations governing the SBA's small business programs are made consistent through implementing this rule promptly.

Likewise, SBA believes it is important that the protest procedures for all of its government contracting programs be consistent. The rule governing the other programs was subject to public notice and comment; therefore, it would not be contrary to the public interest to proceed with these conforming changes to the WOSB protest procedures in an interim final rule. At this time, there have been only a few protests and no appeals such that amending these procedures will not affect many parties.

Finally, we note that the public will still have the opportunity to offer comments on this, which will be reviewed by the SBA. Accordingly, SBA finds that good cause exists to publish this rule as an interim final rule as quickly as possible.

IV. Justification for Immediate Effective Date of Interim Final Rule

The APA requires that “publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule.” 5 U.S.C. 553(d)(3) SBA finds

that good cause exists to make this final rule effective the same day it is published in the Federal Register.

The purpose of the APA provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. For the reasons set forth above in Section III, “Justification for Publication as Interim Final Rule”, SBA finds that good cause exists for making this interim final rule effective immediately, instead of observing the 30-day period between publication and effective date. Nonetheless, the public may provide comments to SBA by the deadline for comments. SBA will review any comments received.

V. Compliance With Executive Orders 12866, 12988, and 13132, and the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612) Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does constitute a significant regulatory action under E.O. 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

This regulatory action amends regulations that implement section 8(m) of the Act, which was enacted as part of section 811 of the Small Business Reauthorization Act of 2000, Pub. L. 106–554. These amendments are necessary because without such amendments, the SBA’s WOSB Program rules conflict with parts of the FAR and SBA’s rules concerning protest procedures for its other government contract programs. Such conflict

and inconsistency causes confusion to members of the procurement community, including small businesses.

2. What are the potential benefits and costs of this regulatory action?

The benefits of this rule are that there will not be a conflict between the SBA's rules and the FAR rule, or other parts of SBA's rules. Such conflicts result in confusion amongst members of the contracting community and small businesses.

3. What are the alternatives to this final rule?

The SBA considered as an alternative referencing the FAR acquisition thresholds in all cases, since those thresholds are subject to change every five years as a result of inflation, and that would mean SBA could need to amend its regulations every five years.

However, the SBA believed that while it would be beneficial to reference the FAR Simplified Acquisition Thresholds and Micro-Purchase Thresholds, since those dollar values are commonly used, referred to and known in the acquisition community, the SBA did not believe it should reference the FAR with respect to the acquisition threshold relating to when a contracting officer may set aside a requirement for WOSBs or EDWOSBs. Those thresholds are new and not as well known, and should be specifically set forth in SBA's regulations, similar to how the thresholds for the 8(a), HUBZone and SDVO SBC programs are set forth in the SBA's regulations.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For the purpose of Executive Order 13132, SBA has determined that the rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this final rule has no federalism implications warranting the preparation of a federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C., Chapter 35, SBA has determined that this rule does not impose additional reporting or recordkeeping requirements.

Regulatory Flexibility Act (RFA)

Because this rule is an interim final rule, there is no requirement for SBA to prepare an Initial Regulatory Flexibility Act analysis. The RFA requires administrative agencies to consider the effect of their actions on small entities, small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule the agency must prepare analysis that describes whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, the RFA requires such analysis only where notice and comment rulemaking is required but as discussed above, SBA has determined that there is good cause to publish this rule without the need for public notice and comment.

List of Subjects in 13 CFR Parts 124, 125, 126, and 127

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Individuals with disabilities, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, the Small Business Administration amends 13 CFR Parts 124, 125, 126, and 127 as follows:

**PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED
BUSINESS STATUS DETERMINATIONS**

1. The authority citation for 13 CFR part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99-661, Pub. L. 100-656, sec. 1207, Pub. L. 101-37, Pub. L. 101- 574, section 8021, Pub. L. 108-87, and 42 U.S.C. 9815.

2. Amend § 124.503 as follows:

- a. Revise paragraph (j)(1); and

- b. Revise the paragraph (j)(2) heading and the first sentence of paragraph

(j)(2)(i).

The revisions read as follows:

**§ 124.503 How does SBA accept a procurement for award through the 8(a) BD
program?**

* * * * *

(j) * * *

(1) Acquisitions Valued At or Below the Simplified Acquisition Threshold. The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the Micro-purchase Threshold but not exceeding the Simplified Acquisition Threshold (defined in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. This requirement does not preclude a contracting officer from making

an award to a small business under the 8(a) BD, HUBZone, SDVO SBC or WOSB Programs.

(2) Acquisitions Valued Above the Simplified Acquisition Threshold. (i) The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the Simplified Acquisition Threshold (defined in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. * * *

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PART 125—GOVERNMENT CONTRACTING PROGRAMS

3. The authority citation for 13 CFR part 125 continues to read as follows:

Authority: 15 U.S.C. 632(p), (q); 634(b)(6); 637; 644 and 657f.

4. Amend § 125.2 as follows:

a. Revise paragraph (f)(1); and

b. Revise the paragraph (f)(2) heading and first sentence of paragraph (f)(2)(i).

The revisions read as follows:

§ 125.2 Prime contracting assistance.

* * * * *

(f) * * *

(1) Acquisitions Valued At or Below the Simplified Acquisition Threshold. The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the Micro-purchase Threshold but not exceeding the Simplified Acquisition Threshold (defined in the FAR at 48 CFR 2.101) for small business concerns when there

is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. This requirement does not preclude a contracting officer from making an award to a small business under the 8(a) BD, HUBZone, SDVO SBC or WOSB Programs.

(2) Acquisitions Valued Above the Simplified Acquisition Threshold. (i) The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the Simplified Acquisition Threshold (defined in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. * * *

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5. Amend § 125.19 by:

- a. Revising paragraph (b)(1); and
- b. Revising the paragraph (b)(2) heading and first sentence of paragraph (b)(2)(i).

The revisions read as follows:

§ 125.19 When may a contracting officer set-aside a procurement for SDVO SBCs?

* * * * *

(b) * * *

(1) Acquisitions Valued At or Below the Simplified Acquisition Threshold. The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the Micro-purchase Threshold but not exceeding the Simplified Acquisition Threshold (defined in the FAR at 48 CFR 2.101) for small business concerns when there

is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. This requirement does not preclude a contracting officer from making an award to a small business under the 8(a) BD, HUBZone, SDVO SBC or WOSB Programs.

(2) Acquisitions Valued Above the Simplified Acquisition Threshold. (i)

The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the Simplified Acquisition Threshold (defined in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. * * *

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PART 126--HUBZONE PROGRAM

6. The authority citation for part 126 continues to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p) and 657a.

7. Amend § 126.607 as follows:

a. Revise paragraph (b)(1); and

b. Revise the paragraph (b)(2) heading and first sentence of paragraph (b)(2)(i).

The revisions read as follows:

§ 126.607 When must a contracting officer set aside a requirement for qualified HUBZone SBCs?

* * * * *

(b) * * *

(1) Acquisitions Valued At or Below the Simplified Acquisition Threshold. The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the Micro-purchase Threshold but not exceeding the Simplified Acquisition Threshold (defined in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. This requirement does not preclude a contracting officer from making an award to a small business under the 8(a) BD, HUBZone, SDVO SBC or WOSB Programs.

(2) Acquisitions Valued Above the Simplified Acquisition Threshold. (i) The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the Simplified Acquisition Threshold (defined in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. * * *

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PART 127-WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

8. The authority citation for part 127 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 637(m), and 644.

9. Amend § 127.301 by revising paragraph (a)(2) to read as follows:

§ 127.301 When may a contracting officer accept a concern's self-certification?

(a) * * *

(2) Non-Third Party Certification. A contracting officer may accept a concern's self-certification in ORCA if the apparent successful offeror WOSB or EDWOSB has provided the required documents, which are set forth in § 127.300(e), and there has been no protest or other credible information that calls into question the concern's eligibility as an EDWOSB or WOSB.

* * * * *

10. Amend § 127.503 as follows:

a. In paragraph (a)(2), remove "\$5,000,000" and add in its place "\$6,500,000" and remove "\$3,000,000" and add in its place "\$4,000,000";

b. In paragraph (b)(2), remove "\$5,000,000" and add in its place "\$6,500,000" and remove "\$3,000,000" and add in its place "\$4,000,000";

c. Revise paragraph (d)(1);

d. Revise the paragraph (d)(2) heading and the first sentence of paragraph (d)(2)(i); and

e. Add paragraph (f).

The revisions and addition read as follows:

§ 127.503 When is a contracting officer authorized to restrict competition under this part?

* * * * *

(d) * * *

(1) Acquisitions Valued At or Below the Simplified Acquisition Threshold. The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the Micro-purchase Threshold but not exceeding the Simplified Acquisition Threshold (defined in the FAR at 48 CFR 2.101) for small business concerns when there

is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. This requirement does not preclude a contracting officer from making an award to a small business under the 8(a) BD, HUBZone, SDVO SBC or WOSB Programs.

(2) Acquisitions Valued Above the Simplified Acquisition Threshold. (i) The contracting officer shall set aside any acquisition with an anticipated dollar value exceeding the Simplified Acquisition Threshold (defined in the FAR at 48 CFR 2.101) for small business concerns when there is a reasonable expectation that offers will be obtained from at least two small business concerns that are competitive in terms of quality and delivery and award will be made at fair market prices. * * *

* * * * *

(f) Acquisition-Related Dollar Thresholds. The Federal Acquisition Regulatory Council (FAR Council) has the responsibility of adjusting each acquisition-related dollar threshold on October 1, of each year that is evenly divisible by five. Acquisition-related dollar thresholds are defined as dollar thresholds that are specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an executive agency as determined by the FAR Council. 41 U.S.C. 431a(c). Part 127, Women-Owned Small Business Federal Contract Program, contains acquisition-related dollar thresholds subject to inflationary adjustments. The FAR Council shall publish a notice of the adjusted dollar thresholds in the Federal Register. The adjusted dollar thresholds shall take effect on the date of publication.

11. Amend § 127.604 as follows:

- a. In paragraph (a), revise the second sentence and add a third sentence;
- b. In the third sentence of paragraph (c)(1) remove the word “two” and add in its place the word “three”;
- c. Revise the second and third sentences of paragraph (d); and
- d. Revise paragraph (f)(2)(i).

The revisions and addition read as follows:

§ 127.604 How will SBA process an EDWOSB or WOSB status protest?

(a) Notice of receipt of protest. * * * The contracting officer may award the contract after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest. Notwithstanding such a determination, the provisions of paragraph (f) of this section apply to the procurement in question.

* * * * *

(d) Time period for determination. * * * If SBA does not issue its determination within the fifteen (15) business day period (or within any extension of that time the contracting officer has granted), the contracting officer may award the contract if he or she determines in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government. Notwithstanding such a determination, the provisions of paragraph (f) of this section apply to the procurement in question. * * *

* * * * *

(f) * * *

(2) * * *

(i) If a contracting officer receives such a determination after contract award, and no OHA appeal has been filed, the contracting officer shall terminate the award.

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Dated: October 10, 2011

Karen G. Mills,
Administrator.

[FR Doc. 2012-467 Filed 01/11/2012 at 8:45 am; Publication Date: 01/12/2012]